

1 THE HONORABLE ROBERT S. LASNIK
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
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13 9 DARRELL KING,
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15 Plaintiff,

16 v.
17 M/V DYNASTY, her tackles, appurtenances,
18 cargo, IN REM, and her owner and operators ,
19 AMERICAN SEAFOODS CO., IN
20 PERSONUM
21 Defendants.

22 NO. 09-792 RSL
23
24

25 DEFENDANT AMERICAN SEAFOODS'
REPLY RE MOTION TO DISMISS
PLAINTIFF'S CLAIMS

NOTE FOR MOTION CALENDAR:
Friday, March 26, 2010

16 Defendant American Seafoods Company LLC ("ASC") respectfully submits its reply
17 regarding its motion to dismiss plaintiff's case for failure to comply with discovery.

18 Plaintiff has not responded "directly" to defendant's motion. He did file a one line
19 motion to "reopen the case" on March 4th, i.e., after this motion was filed. The Court
20 subsequently issued an Order on March 10th striking plaintiff's motion since the case had not
21 been terminated or closed, nor had the case schedule been altered in any way. Plaintiff's
22 opposition to ASC's motion to dismiss was due this past Monday, but he filed no opposition.
23 A party's failure to file an opposition "may be considered by the court as an admission that
24 the motion has merit." CR 7(b)(2).
25

1 It bears noting that plaintiff has filed two papers with the Court in the past month that
 2 can be described as strange.

3 By way of background, on January 12th, ASC filed a motion to compel plaintiff to
 4 answer discovery and to produce Initial Disclosures (dkt. 9), both of which were due last
 5 summer. The Court issued an Order on February 5th giving plaintiff seven days to provide
 6 Initial Disclosures and answers to ASC's discovery requests. Dkt. 11. Plaintiff did not
 7 comply with this order.

8 ASC then prepared a motion to dismiss for non-compliance, but on February 24th
 9 before ASC's motion was filed, plaintiff filed a "Motion and Declaration and Response to
 10 Order to Compel and Notice of Electronic Failure" in which counsel represented that his non-
 11 compliance with the pending Court order was caused by a broken fax machine. Dkt. 12.
 12 Plaintiff requested until the end of that day to comply with the discovery order. Id. The Court
 13 issued an order the next day pointing out the obvious, i.e., fax machines have nothing to do
 14 with receiving Orders and making filings through the ECF system. Dkt.13. Counsel was
 15 directed to comply with the Court's ECF system. The Court also gave plaintiff an extension
 16 of its prior order and allowed him until the end of the prior day to comply with its Order to
 17 produce Initial Disclosures and answers to ASC's discovery (as plaintiff represented it would
 18 do).
 19

20 However, plaintiff did not comply with the Court's February 5th or 25th orders. He has
 21 never produced discovery answer. Although plaintiff did produce "Initial Disclosures" to
 22 ASC on February 26th, he merely sent back the same documents that ASC had produced to
 23 plaintiff last summer. Because discovery was not produced, ASC filed this motion to dismiss
 24 on March 4.
 25

On March 9th, plaintiff made his second curious filing, asking the Court to reopen the case. Although that motion has no relevance to ASC's motion (one might characterize it as putting the cart before the proverbial horse), plaintiff's counsel made one relevant comment therein, stating that he "has complied in full with the prior order of this court to furnish discovery requests by this court by the deadline established in such order." Dkt. 17. As previously stated, this representation is false since no discovery responses have ever been produced.

ASC's Interrogatories and Requests for Production of Documents were served on July 2, 2009. Plaintiff has ignored repeated letters, two motions, and two Court orders to produce responses. ASC does not know what else it can do to get plaintiff to cooperate in discovery, particularly since plaintiff has taken no action to prosecute this case apart from filing his Complaint. Under the circumstances, defendant ASC submits that dismissal is warranted.

SANCTIONS

ASC also seeks an award of monetary sanctions for having to file this motion. ASC's counsel affirms under oath that he spent 2.3 hours time preparing this reply on the motion to dismiss the case. ASC requests that as a sanction it be awarded this time against plaintiff and his counsel at a rate of \$300 per hour, or \$690. ASC requests a total award for sanctions related to its discovery motion and motion to dismiss in the total amount of \$2190.

CONCLUSION

For the foregoing reasons, defendant American Seafoods Company LLC respectfully requests that this action be dismissed pursuant to in its entirety and with prejudice.

1 DATED this 26th day of March, 2010.

2 GASPICH & WILLIAMS PLLC

3

4 s/Anthony J. Gaspich

5 Anthony J. Gaspich, WSBA No. 19300
6 Russell R. Williams, WSBA No. 21203
7 Attorneys for Defendants American Seafoods
8 Company LLC

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10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on March 26, 2010, I electronically filed the foregoing with the
12 Clerk of the Court using the CM/ECF, which will send notification of such filing to the
13 following: Horton Smith, hrtnsmith@gmail.com

14

15 s/Sibel Yasarturk

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